

Appl. No. 10/780,846  
Atty. Docket No. 9527LS  
Amdt. dated November 9, 2006  
Reply to Office Action of August 11, 2006  
Customer No. 27752

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### REMARKS

#### Claim Status

Claims 1-20 are pending in the present application. No additional claims fee is believed to be due.

#### Rejection Under 35 USC §102 Over *Bustin* (GB 1,301,198)

The Office Action rejects claims 1, 3, 12, 14-16 and 18 under 35 USC §102(a) as anticipated by *Bustin* (GB 1,301,198). Applicant respectfully traverses this rejection. Applicant submits that the cited reference fails to teach each of the limitations of the invention as claimed.

The Office Action provides that the claimed features of the invention are inherently present in the teachings of *Bustin* due to a similar method of manufacture. The Office Action takes the position that any and all plastic films passed through an embossing process will yield a film necessarily possessing a stainable network and having elastic like behavior. Applicant submits that the Office Action has overreached in this argument and that there is no basis in the teaching of the *Bustin* reference to support the overarching conclusion that the films disclosed possess elastic like behavior and comprise a stainable network.

The *Bustin* references discloses a number of variables present in the embossing process, roll temperature, relative speed of the roll and the substrate and the nature of the structures on each of the embossing rolls, additionally, embossing nip pressure, depth of engagement and other variables can also affect the result of passing a material through an embossing nip. To support an anticipation rejection, the Office Action takes the position that regardless of any changes to any of the above variables, and in all possible combinations of all embossing variables, the embossed substrate will necessarily possess a stainable network and will exhibit elastic like behavior.

Applicant submits that the features imparted to a substrate during an embossing process are diverse depending upon the specific and exact nature of a significant number of variables associated with the process. Sufficient diversity of results exists that it is not possible to establish that the claimed features are necessarily present in any embossed film because they are not necessarily present.

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Absent more than a conclusory submission that claimed features are necessarily present in the disclosed materials based upon an assumption that any and all embossed films are the same, Applicants submits that the Office Action fails to properly support a anticipatory rejection in that the claimed features have not been demonstrated by the Office Action to be necessarily present in the structures disclosed by the reference.

Applicant claims methods for making articles having elastic-like behavior. Claim 1 also includes the limitation of forming a portion of sheet material into a strainable network. Nothing in the cited reference can be said to teach the manufacture of an article having elastic-like behavior, or the formation of a strainable network. Embossed plastic films as taught by the reference are not inherently elastic-like in their behavior and do not inherently possess strainable networks. The reference does not expressly teach that the particular films are elastic-like or that they comprise strainable networks. Therefore the reference does not teach all of the limitations of the inventions as claimed and the rejection under 35 USC §102(a) should be withdrawn.

Rejection Under 35 USC §103(a)

Claims 2, 4, 10 and 12 has been rejected under 35 USC §103(a) as being unpatentable over *Bustin* in view of *Cronauer* (US 5,709,069). This rejection is traversed because the combined references fail to establish a *prima facie* case of obviousness under 35 USC §103(a).

The deficiencies of the *Bustin* reference noted above are not cured by the addition of the *Cronauer* reference. The combination of references fails to teach or suggest each of the limitations of the invention as claimed and therefore fails to establish a *prima facie* case of obviousness under 35 USC §103(a).

Claims 2, 4-9, 10-11, 17 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Bustin* as applied to claim 1 above and further in view of *Rowe et al.* (US 2615375), or *LaFleur et al.* (US 4481006), or *Yisha et al.* (US 5956929), or the collective teachings of and *Hiramoto et al.* (US 6446684) and *Henaus* (US5845463) and *Adelmann* (US 5564252) and *Muller* (US 5279095). Applicant respectfully traverses this rejection.

The combination of *Bustin* with any of the secondary references fails to cure the base deficiency of the *Bustin* reference with respect to the invention as claimed. The

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*Bustin* reference does not teach or suggest the limitations of the invention as set forth in either of the independent claims. The addition of other references to provide the limitations of dependent claims fails to cure this basic fault of the rejections.

The Office Action rejects claim 13 under 35 USC §103(a) as being unpatentable in view of *Bustin* in combination with Meyers, (US 6,394,652). Meyer is offered for the limitation of incorporating a closure into the bags of *Bustin*. The addition of a closure to the bags described in the *Bustin* reference fails to cure the deficiency of *Bustin* with regard to the elastic like nature of the claimed article or the formation of a strainable network in the sheet of the article.

None of the combinations of references provided by the Office Action overcomes the basic deficiency of the *Bustin* reference with regard to the independent claims. The rejections under 35 USC §103(a) should be reconsidered and withdrawn.

#### Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 USC §§ 102, 103. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-20 is respectfully requested.

Respectfully submitted,

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By



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